

109TH CONGRESS
1ST SESSION

H. R. 1334

To amend title 28, United States Code, to provide for the removal to Federal court of certain State court cases involving the rights of incapacitated persons, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2005

Mr. SENSENBRENNER (for himself, Mr. WELDON of Florida, Mr. DELAY, Mr. CHABOT, Mr. FEENEY, Mr. JENKINS, Mr. CANNON, Mr. KING of Iowa, Mr. BACHUS, Mr. FRANKS of Arizona, Mr. HOSTETTLER, Mr. KELLER, Mr. DANIEL E. LUNGREN of California, and Mr. PENCE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide for the removal to Federal court of certain State court cases involving the rights of incapacitated persons, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protection of Incapaci-
5 tated Persons Act of 2005”.

1 **SEC. 2. REMOVAL OF CERTAIN CASES TO FEDERAL COURT**
2 **TO PROTECT THE RIGHTS OF INCAPACI-**
3 **TATED PERSONS.**

4 (a) RIGHT OF REMOVAL.—Chapter 89 of title 28,
5 United States Code, is amended by adding at the end the
6 following:

7 **“§ 1453. Protection of rights of incapacitated persons**

8 “(a) Notwithstanding any other provision of this
9 chapter, not later than 30 days after available State rem-
10 edies have been exhausted, an incapacitated person, or the
11 next friend of an incapacitated person, may remove any
12 claim or cause of action described in subsection (b) to the
13 United States district court for the district in which the
14 claim or cause of action arose, or was heard.

15 “(b) The claim or cause of action referred to in sub-
16 section (a) is one in which the State court authorizes or
17 directs the withholding or withdrawal of food or fluids or
18 medical treatment necessary to sustain the incapacitated
19 person’s life, but does not include a claim or cause of ac-
20 tion in which no party disputes, and the court finds, that
21 the incapacitated person, while having capacity, had exe-
22 cuted a written advance directive valid under applicable
23 law that clearly authorized the withholding or withdrawal
24 of food or fluids or medical treatment in the applicable
25 circumstances.

1 “(c) In hearing and determining a claim or cause of
2 action removed under this section, the court shall only
3 consider whether authorizing or directing the withholding
4 or withdrawal of food or fluids or medical treatment nec-
5 essary to sustain the incapacitated person’s life constitutes
6 a deprivation of any right, privilege, or immunity secured
7 by the Constitution or laws of the United States.

8 “(d) The United States district court shall determine
9 de novo any claim or cause of action considered under sub-
10 section (c), and no bar or limitation based on abstention,
11 res judicata, collateral estoppel, procedural default, or any
12 other doctrine of issue or claim preclusion shall apply.

13 “(e) As used in this section—

14 “(1) the term ‘incapacitated person’ means a
15 born individual who is presently incapable of making
16 relevant decisions concerning the provision, with-
17 holding, or withdrawal of food, fluids or medical
18 treatment under applicable law; and

19 “(2) the term ‘next friend’ means an individual
20 who has some significant relationship with the real
21 party in interest, and includes a parent.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 at the beginning of chapter 89 of title 28, United States

- 1 Code, is amended by adding at the end the following new
- 2 item:

“1453. Protection of rights of incapacitated persons.”.

